Pellegrino, Rachel

From: Brown, Brian (TM)
Sent: Thursday, January 06, 2011 4:03 PM
To: Hickey, Toni
Subject: FW: Small Business Study

From: Morris, Craig
Sent: Thursday, January 06, 2011 3:36 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study

From: A J Glaser (b)(6)
Sent: Thursday, January 06, 2011 1:52 PM
To: TMFeedback
Subject: Small Business Study

To Whom It May Concern,

Responding to your request for information concerning "Trademark Bullies", I might just be your bullied poster child.

To review more voluminous background information than any other USTPO case I could find, see: http://ttabvue.uspto.gov/ttabvue/v?pno=91173417&pty=OPP

How is this bullying? Let me explain. This case concerns my little private company, HUNT, whose annual sales are far below $10 million, fighting to enforce its clearly established trademark rights against a very large public company, Philips, whose sales exceed $35 billion annually. I have retained a small local IP attorney on a shoestring budget, where Philips has retained Finnegan, Henderson, Farabow, LLP., the largest IP law firm in the world. Certainly no foul here, I am merely pointing out that these folks aren't newbies to the game, and "Why, I had no idea any of this was taking place" is probably not a valid defense for either Philips' or Finnegan's actions. I will explain the issues below.

I am not an attorney, simply a small businessman trying to protect my trademark rights. What I understand of the USTPO trademark opposition process is that, in layman's terms, it is almost a self administered trial process, where both parties, in good faith, present their arguments and evidence to each other and when it becomes clear and/or obvious that the other party has prior rights, the firm in the wrong is supposed to concede. Here is an example of how I believe it is supposed to work: http://ttabvue.uspto.gov/ttabvue/v?pno=92044737&pty=CAN In this proceeding, HUNT, still the same small private company, cancelled a registered mark of a very large public company, Hubbell, whose sales exceed $2 billion per year, and had retained the premier firm, Oblin, Spivik. Again, no newbies to the game here, but perhaps a company and law firm of higher moral character. In this case, we presented our evidence and very quickly, Hubbell, conceded and cancelled their trademark and, furthermore, Hubbell actually apologized to HUNT for their infringement. This is how, I believe, it is supposed to happen.

Back to the current Philips and Finnegan proceeding. Over the last five years, HUNT has provided evidence upon additional evidence, fact upon additional fact to support our prior use. It falls on deaf ears. Stall, stall, ignore, ignore. Our evidence of prior use culminated with our filing Opposition Item # 85, Testimony for Plaintiff, some time ago which clearly proved our use, with painstakingly detailed examples of use, by each year, since 1985. Still, Philips and Finnegan chose to continue their strategy of ignore, ignore, stall and stall some more, run the bill, bully the micro company with the hope they implode or run out of money... then the bully Philips/Finnegan wins! Might beats right... Philips/Finnegan showed that little company, HUNT, and all the other little companies, not to mess with them! Is this a valid strategy? Apparently

so, since lots of really smart folks work for Philips and Finnegan. Is the strategy moral or ethical? I do not believe that it is.

Assuming that the USPTO also doesn't believe that it is right, what should or can the USTPO do? My immediate thought is that closer attention be paid by the USTPO as these proceedings progress and the USTPO get involved mid-stream with a "suggestion" that the two parties meet to resolve the issues. Again, I am not an attorney, but have been through a couple of legal disputes in both my personal life and professional career. In one personal example, I had a local judge that "strongly suggested that the two parties sit down and resolve our issues, or if he were forced to resolve the matter...neither party would be happy." We settled the matter rather quickly. I have found myself re-thinking this many times over the years, and I have to conclude that we had a wise judge in that case.

It seems a great waste of the court's time as well as a small company's resources to allow these oppositions to continue in their current form, with the clear advantage to the big guy to bully the little guy for years and years in the hope (and probability) of winning based on size and money, not who is right.

If you have any questions or would like to discuss this matter in more detail, please feel free to contact me at the number below.

Best Regards,

A. J. Glaser
President

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